

New government decree changes the feed-in tariff for Italian photovoltaic plants

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On 24 June 2014, the Italian Ministry for Economic Development (the “MISE”) has published on the Italian Official Gazette the new law-decree (the “**Law-Decree**”) providing, among other things, for a reshaping of the feed-in tariffs (the “FIT”) currently paid to photovoltaic plants. The issuance of this Law-Decree was anticipated in our previous newsletter on this matter, dated 20 June 2014, and has been the subject of a heated debate, because of the material consequences it will have on the cash flows, financings and returns of several thousand projects across Italy.

The Law-Decree is effective starting from 25 June 2014, but it will have to be converted into law by the Italian Parliament (which is entitled to make amendments, integrations or to repeal it) within the next 60 days. If the Law-Decree will not be converted within this time period, it will lose effects from the date of its publication.

In order to reduce the impact of the FIT paid to photovoltaic plants on end-users’ electricity bills (in particular for small and medium enterprises), the Law-Decree introduces measures that significantly affect the terms and conditions of the FIT currently granted to photovoltaic plants.

Please find below a summary of the main measures included in the Law-Decree that have an impact on the FIT payable to photovoltaic plants. Compared to drafts initially circulated, the significant changes are: (i) the reduction from 10% to 8% of the voluntary flat reduction that producers may accept for avoiding the FIT re-modulation described below; and (ii) the inclusion of a new tariff to be paid by producers owning photovoltaic plants in connection with the costs borne by the GSE for performing certain activities in connection with the FIT.

1. Changes to the FIT payable to photovoltaic plants

The main measure included in the Law-Decree is a re-modulation of the FIT payable to photovoltaic plants having a capacity exceeding 200 kW; alternatively, producers may agree to a voluntary flat reduction of the currently applicable FIT.

1.1. Re-modulation

Starting from 1st January 2015, the FIT will be reduced by a ratio ranging from 17% to 25% (depending on the residual incentivized period) as shown in the chart below. This reduction is compensated by an extension of the incentivized period to 24 years starting from the date of entry into operation of the relevant plant (instead of the current 20 years).

Reduction Ratios Chart

Residual Incentivized Period (years)	Reduction Ratio
12	25%
13	24%
14	22%
15	21%
16	20%
17	19%
18	18%
more than 19	17%

For the plants receiving all-inclusive tariffs (instead of the combination of FIT and sale of electricity), the reduction will apply only to the FIT-related component of the tariffs.

It is also provided that the Regions and the other local authorities will have to extend the validity of the authorisations and permits for the construction and operation of the plants by a period corresponding to the extended incentivized period.

This measure will apply to photovoltaic plants currently in operation and benefitting from the FIT, and it will likely have a number of negative effects.

In particular, the reduction of the yearly amount of the FIT (even though compensated by an extension of the incentivized period), may not allow producers to comply with the financial ratios and the amortization plans set out under the financings currently in place, which have been negotiated taking into consideration cash flows deriving from an higher annual FIT.

Furthermore, in some cases it may be necessary to re-negotiate the terms of the agreements for the availability of the lands, which may have been originally negotiated in light of a 20-years incentivized period.

1.2. Subsidised financings

According to the Law-Decree, producers that are affected by the above described FIT re-modulation will be entitled to have access to bank financings up to a maximum amount equal to the difference between: (i) the original value of the FIT as at 31st December 2014; and (ii) the value of the FIT resulting from the re-modulation.

It is also specified that, through specific framework agreements that will have to be entered into with bank institutions, the above described financings may benefit from funding and/or guarantees to be made available by the Cassa Depositi e Prestiti S.p.A.. The obligations of Cassa Depositi e Prestiti S.p.A. deriving from the Law-Decree will be guaranteed by the Republic of Italy in accordance with the modalities that will be detailed under a decree to be issued by the Ministry for Economic and Finance.

In order to understand the actual terms (including, among others, financing costs and maturity) of the financings that will be made available pursuant to this provision it will be necessary to wait until the framework agreements mentioned under the Law-Decree are entered into and made available.

In any case, for most of the producers whose plants are currently financed, access to these financings will likely have to occur in the context of a refinancing or restructuring of the existing financings.

1.3. Alternative regime

As anticipated, as an alternative to the re-modulation described under paragraph 1.1. above, producers may agree to a voluntary flat reduction of the FIT currently awarded to their plants by a percentage equal to 8%. This choice will have to be communicated to the GSE by 30 November 2014.

The reduction would be effective starting from 1st January 2015 and would apply until the end of the original incentivized period.

Please note that this reduction would avoid only the re-modulation of the FIT, whilst the rescheduling of the payments of the FIT described under paragraph 2. below would apply in any case.

2. Re-scheduling of the payment terms of the FIT

In addition to the measures described under paragraph 1. above, the Law-Decree specifies that, starting from the second semester of 2014, the GSE will pay the FIT as follows:

- (i) in part, through fixed monthly instalments, calculated on the basis of 90% of the average estimated production of the relevant photovoltaic plant during the relevant year; and
- (ii) the balance, by 30 June of the following year, on the basis of the actual production of the relevant plant.

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It does not constitute a reference for agreements and/or commitments of any nature.

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According to the Law-Decree, the GSE must define within 15 days the operating modalities for implementing this mechanism, and such modalities will then have to be approved by the MISE.

This measure is in addition to those described under paragraph 1. above and, therefore, will increase – at least during 2014 – the negative effects on the cash-flows generated by photovoltaic plants.

3. New tariff for the activities performed by the GSE

According to the Law-Decree, the costs borne by the GSE for the management and control activities related to the incentives schemes have to be borne by the operators benefitting from such activities.

The GSE shall propose to the MISE, within the next 60 days (and then every three years) the amount of the tariffs to be applied in relation to the activities mentioned above. Such tariffs will have to be approved by the MISE within the following 60 days, shall be effective starting from 1st January 2015, and will apply for a three-years period.

Please note that the reference to “management activities in relation to incentives schemes” is quite generic, and therefore it will be necessary to review the implementation decrees in order to understand the actual extent of this provision and the activities that will have to be “reimbursed” to the GSE by producers.